

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
CENTRAL DIVISION

DONALD P. SPEAKMAN, STEPHEN H.  
WEDEL and MARK L. ROBARE,  
Individually and On Behalf of All Others  
Similarly Situated,

Plaintiffs and Counterclaim  
Defendants,

v.

ALLMERICA FINANCIAL LIFE INS. &  
ANNUITY CO., FIRST ALLMERICA  
FINANCIAL LIFE INS. CO., and  
ALLMERICA FINANCIAL CORP.,

Defendants and Counterclaim  
Plaintiffs.

Civil Action No. 4:04-CV-40077-FDS

**DEFENDANTS' MOTION FOR LEAVE TO FILE A SUR-REPLY MEMORANDUM IN  
OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

Defendants and Counterclaim Plaintiffs Allmerica Financial Life Insurance and Annuity Company ("AFLIAC"), First Allmerica Financial Life Insurance Company ("FAFLIC"), and Allmerica Financial Corporation ("AFC") (collectively, "Allmerica" or "Defendants") hereby request leave to file the accompanying Sur-Reply Memorandum in Opposition to the Motion for Class Certification filed by Plaintiffs and Counterclaim Defendants Donald Speakman, Stephen Wedel, and Mark Robare.

The grounds for this motion are as follows:

1. Plaintiffs' last week served a Reply Memorandum in support of their Motion for Class Certification ("Reply") that departed in key respects from the grounds they identified in

their much shorter Opening Memorandum as the basis for the Motion, including new/revised legal theories, factual assertions and citations.

2. For example, in their Reply, Plaintiffs now propose bifurcation of common issues from the individual issues in a manner that courts have found defeat certification and which may implicate the Seventh Amendment and this Court's ability to manage this litigation. Plaintiffs also now argue that a new statistical analysis favors certification, and rely on documents to argue predominance; none of these were identified as the basis for the Motion that they previously filed.

3. Defendants would appreciate the opportunity to respond to the Reply Brief.

4. Defendants believe that the filing of the enclosed Sur-Reply will assist the Court's consideration of the pending Motion for Class Certification, and also will allow for a more efficient hearing this week.

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)**

Pursuant to Local Rule 7.1(A)(2), counsel for Defendants conferred with counsel for Plaintiffs regarding this Motion on July 26, 2001, who indicated that Plaintiffs do not assent to its filing.

ALLMERICA FINANCIAL LIFE  
INSURANCE & ANNUITY CO., FIRST  
ALLMERICA FINANCIAL LIFE  
INSURANCE CO., and ALLMERICA  
FINANCIAL CORP.

By their attorneys,

/s/ Eric D. Levin

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Dated: December 12, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served on this 12th day of December, 2005 on:

**By E-Mail and Overnight Mail**

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